Thiruchelvasegaram a/l Manickavasegar v Mahadevi a/p Nadchatiram

HIGH COURT (KUALA LUMPUR) — CIVIL SUITS NOS S2(S5)-23-04 OF 1997 AND S5-23-08 OF 1997
JAMES FOONG J
22 JANUARY 2000

Tort *— Conspiracy — Conspiracy to defame — Allegation of incest —Agreement to conspire — Whether proved*

Tort *— Defamation — Allegation of incest — General plea, whether acceptable — Whether incest proved — Submissions made in course of legal proceedings, whether protected by absolute privilege — Statements expunged from court's record, whether statements defamatory — Utterance in court house while not in session, whether entitled to absolute privilege — Slander against profession, whether need proof of damage — Whether tort of conspiracy proved — Publication to plaintiff's servant and/or agent, whether merely seeking clarification — Statement on last page of service copy of writ, whether defence of confidentiality and non publication valid*

Tort *— Defamation — Libel and slander — Allegation of incest — General plea, whether acceptable — Whether incest proved — Submissions made in course of legal proceedings, whether protected by absolute privilege — Statements expunged from court's record, whether statements defamatory — Utterance in court house while not in session, whether entitled to absolute privilege — Slander against profession, whether need proof of damage — Whether tort of conspiracy proved — Publication to plaintiff's servant and/or agent, whether merely seeking clarification — Statement on last page of service copy of writ, whether defence of confidentiality and non publication valid*

The plaintiff and the defendant are both advocates and solicitors. The plaintiff is the brother-in-law of the defendant, having married the defendant's eldest sister, Vijayalakshmi. The plaintiff has a daughter, Shanti. The plaintiff claimed that the defendant conspired with her brother (Jega), sister (Saraswathy) and Shanti to defame him. The sting of the defamation was incest by the plaintiff on Shanti. The defamation was said to be contained in: (1) the submission of the defendant to the judge in a civil suit filed by Vijayalakshmi against the defendant; (2) utterance in the court house when the court was not in session; (3) the letter written by Jega to Vijayalakshmi's solicitor; (4) the letter from the defendant's solicitors' firm addressed to the plaintiff's legal company; (5) remarks written by Shanti contained in an acknowledgement copy of the plaintiff's letter; (6) the writing on the back of the last page of the serving copy of the writ; (7) the writing on the back of a letter of demand for an apology; and (8) statutory declaration made by Shanti. The plaintiff claimed that the words stated imputed him to be a person of low morals, who had committed the sexual crime of incest and has discredited him and exposed him to hatred, contempt and ridicule in the eyes of the right-thinking members of the society. The defendant pleaded, inter-alia, the defence of absolute and qualified privileged, justification and non-publication. After setting out the substantive defences, the defendant pleaded a general plea.

Held:

(1) In a defamation suit, it is well settled that a defendant must expressly plead the particular defence he wishes to rely on against each specific charge of defamation with full particulars; ie the ground and fact on which it is based. The general plea of the defendant related to no particular and distinctive allegation in the statement of claim. The defences raised were not supported by any disclosed facts and grounds. By the defendant's own admission, this paragraph was intended as a net to capture anything that had been overlooked. This is certainly unacceptable as it will confuse the plaintiffs and take him by surprise. If the defendant is displeased with the so called 'messy' pleadings of the plaintiff, she can avail herself of all the remedies provided under the rules and procedures as set out under the Rules of High Court 1980; certainly it cannot be reciprocated with this generalised form of pleading. For this, the court shall not entertain the defences raised in the general plea (see p 482G–H).

(2) After careful perusal of all the relevant evidence and having the opportunity to observe the demeanour of the witnesses, the court found that the claim of incest was not proved, even on the balance of probability (see p 483B–D).

(3) The submissions of the defendant, however defamatory they were of the plaintiff, are protected by absolute privilege. The court accepted the submission when tendered. When this happened, the statements contained in these documents must be considered to be made in the course of legal proceedings (see p 488C–E).

(4) Statements once made remain. When the court expunged them, it was only for the purpose of the court's process and record. Other than this, the statements remain as statements made. Thus, the defendant's assertion that since the offending parts of the submissions were expunged by the courts, no defamatory statements exist, was totally unacceptable and was a fallacy (see p 489C–D).

(5) The utterance in the court house when the court was not in session was scandalous based on the finding that there was no truth in the allegation of incest by the plaintiff. Further, the remark was actually uttered by the defendant. A defamatory statement made by counsel outside the court room, with reference to the proceedings, is not entitled to absolute privilege (see p 489D–E, G).

(6) By virtue of ss 5 and 6 of the Defamation Act 1957 in a slander to the plaintiff of his profession, there shall be no necessity for the plaintiff to prove that he has suffered damages. Here, the plaintiff is and was an advocate and solicitor, and the slander inflicted by the defendant on him was calculated to disparage him in his profession (see p 489H–I).

(7) Conspiracy is a cause of action on its own in tort to cover a situation where there is a combination of two or more persons who wilfully injure a man in his trade resulting in damage to him. This cause of action is separate and distinct from that of the tort of defamation which is governed by different factors. By the pleadings of the plaintiff, I am of the view that the allegation of defamation in the letter written by Jega to Vijayalakshmi's solicitors is more for the tort of conspiracy rather than defamation (see p 490D–H).

(8) The court could not agree to the defendant's explanation that the letter by the defendant's solicitors' firm addressed to the plaintiff's legal company was to seek clarification. There was no request for clarification nor was there any subject matter that need to be clarified. The contents consisted of derogatory remarks, which had no truth in them. They imply that the plaintiff was a person of low morals, lustful and mean, and for this had exposed him to hatred, contempt and ridicule by the right-thinking members of society. Though the publication of the letter was to the plaintiff's staff, the defendant was considered liable for defamation when such publication was to the plaintiff's servant and/or agent (see pp 490I–491A, F).

(9) Though the defendant had clarified that the remarks were written by Shanti, the liability for publication arose from authorization. The defendant is and was the sole proprietor of the legal firm and Shanti was only a legal assistant — an employee of the defendant. By allowing a staff to write defamatory remarks on a document meant and intended for the firm, and approving them amounts to the proprietor of the firm making such statements. For this, the defendant must be held responsible (see pp 491H–492A).

(10) The defendant's reliance on her assertion that the statement was written in her private office and thereafter placed in a sealed envelope marked 'private and confidential' was just not probable. As an advocate and solicitor, the defendant would be aware of the rules and procedures that require such an acknowledgement copy of serving writ to be exhibited to an affidavit of service. With such a practice, she would have known that there could be no confidentiality for this document. So it is most unlikely that she did what she claimed (see p 492C–E).

(11) The plaintiff had not satisfied the court that the defendant directed Shanti to affirm contents in the statutory declaration. Shanti is and was then an adult and a member of the Bar. The court did not think such a serious act as affirming a statutory declaration, Shanti could be forced into it. She must have done this, most probably in furtherance of the conspiracy brought about by inducement by the defendant and Jega. But the court was not convinced to charge the defendant for making this defamatory statement (see p 493F–G).

(12) After considering the evidence as a whole and particularly from the contents of the defamation and how they were executed, the court found the tort of conspiracy proved. The court detected a pattern of concerted actions by the defendant's group to synchronise their attack on the plaintiff's reputation and his profession. This is with the sole objective of forcing the plaintiff to influence his wife to compromise on the settlement of the estate property. Though the defendant had expressly denied any part in this scheme to injure the plaintiff in his profession, however the court found that she was and is in the thick and thin of the whole conspiracy as can be noticed by her actions in the carrying out these defamatory remarks in association and in conjunction with the others named. In conspiracy, the tort is committed as soon as the agreement with other conspirators is made, and it continues to be committed so long as the combination persists. The court concluded that the defendant was liable to the plaintiff under this cause of action of conspiracy (see p 494B–F).

(13) Since the slander in this case involved the plaintiff in his profession and imputed him to a crime punishable with a term of imprisonment, there was no necessity for the plaintiff to tender proof of special damages. Undoubtedly, the defamatory remarks by the defendant were of grave and serious nature. The defendant's act in publishing such defamatory statements over a substantial period; and with malice, had certainly exposed the plaintiff to much hatred, contempt and ridicule by society. The mode of publication of the defamation, especially those on formal and legal documents were contemptuous. It showed the defendant's total disrespect for the image, integrity and honour of legal profession of which she, herself is a member (see p 495A–B, D–G).

[Bahasa Malaysia summary

Plaintif dan defendan adalah peguambela dan peguamcara. Plaintif merupakan abang ipar defendan, yang berkahwin dengan kakak sulung defendan, Vijayalakshmi. Plaintif mempunyai seorang anak perempuan, Shanti. Plaintif mendakwa bahawa defendan telah bersubahat dengan abang beliau (Jega), kakak (Saraswathy) dan Shanti untuk memfitnah beliau. Kata-kata bisa fitnah tersebut adalah perbuatan inses (incest) oleh plaintif ke atas Shanti. Fitnah tersebut dikatakan terkandung di dalam: (1) penghujahan defendan kepada hakim di dalam guaman sivil yang difailkan oleh Vijayalakshmi terhadap defendan; (2) ucapan di dalam mahkamah semasa mahkamah tidak bersidang; (3) surat yang ditulis oleh Jega kepada peguamcara Vijayalakshmi; (4) surat daripada firma peguamcara defendan yang dialamatkan kepada firma guaman plaintif; (5) kenyataan yang telah ditulis oleh Shanti yang terkandung di dalam salinan akuan penerimaan kepada surat plaintif; (6) tulisan di belakang muka surat terakhir salinan writ serahan; (7) tulisan di

belakang satu surat tuntutan tentang satu pemaafan; dan (8) deklarasi statutori yang dibuat oleh Shanti. Plaintif mendakwa bahawa kata-kata yang dinyatakan mengatakan beliau sebagai seorang yang mempunyai moral rendah, yang telah melakukan jenayah seks inses dan telah mencemarkan nama baik beliau dan mendedahkan beliau kepada kebencian, penghinaan dan cemuhan di mata masyarakat yang berfikiran waras. Defendan telah memohon, antara lain, pembelaan perlindungan mutlak dan bersyarat, berjustifikasi dan tiada penerbitan. Setelah mengemukakan pembelaan-pembelaan yang substantif tersebut, defendan membuat suatu plid am.

Diputuskan:

(1) Di dalam satu guaman fitnah, adalah suatu yang mantap bahawa seorang defendan mestilah dengan nyata membuat plid tentang pembelaan tertentu bahawa beliau berhasrat untuk bergantung terhadap setiap pertuduhan khusus fitnah tersebut dengan butiran penuh; iaitu alasan dan fakta yang ia didasari. Plid am defendan tiada kaitan dengan apa-apa butiran dan dakwaan yang tersendiri di dalam penyataan tuntutan. Pembelaan-pembelaan yang ditimbulkan tidak disokong oleh apa-apa fakta-fakta dan alasan-alasan yang didedahkan. Dengan pengakuan defendan sendiri, perenggan ini adalah bertujuan sebagai satu jaring untuk menjerat apa-apa yang telah terlepas perhatian. Ini sememangnya tidak boleh diterima kerana ia akan mengelirukan plaintif dan mengejutkan beliau. Jika defendan tidak berpuas hati dengan pliding plaintif yang dikatakan sebagai 'menyemakkan', beliau boleh menggunakan semua remedi yang diperuntukkan di bawah peraturan dan prosedur sebagai mana yang telah ditetapkan di bawah Kaedah-Kaedah Mahkamah Tinggi 1980; tentu sekali ia tidak dapat ditukar dengan bentuk umum pliding ini. Dengan itu, mahkamah tidak akan melayan pembelaan-pembelaan yang ditimbulkan di dalam plid am tersebut (lihat ms 482G–H).

(2) Setelah diteliti dengan cermat tentang semua keterangan relevan dan mendapat peluang meneliti perilaku saksi-saksi, mahkamah mendapati bahawa dakwaan inses tidak dibuktikan, walaupun atas imbangan kebarangkalian (lihat ms 483B–D).

(3) Penghujahan defendan, walaupun berunsur fitnah tentang plaintif, dilindungi oleh perlindungan mutlak. Mahkamah menerima penghujahan tersebut ketika ditenderkan. Apabila ini berlaku, penyataan yang terkandung di dalam dokumen-dokumen tersebut sepatutnya dianggap sebagai telah dibuat di dalam prosiding perundangan (lihat ms 488C–E).

(4) Penyataan-penyataan setelah dibuat kekal sedemikian. Apabila mahkamah memotongnya, ia hanya bagi tujuan proses dan rekod mahkamah. Selain daripada itu, penyataan-penyataan tersebut kekal sebagai penyataan-penyataan yang dibuat. Oleh itu, penegasan defendan bahawa memandangkan bahagian yang memalukan di dalam penghujahan tersebut telah dipotong oleh

mahkamah tiada penyataan fitnah wujud tidak dapat diterima sepenuhnya dan adalah satu salah anggapan (lihat ms 489C–D). A

(5) Ucapan di dalam mahkamah semasa mahkamah tidak bersidang adalah bersifat skandal berdasarkan penemuan bahawa tidak ada kebenaran di dalam dakwaan inses oleh plaintif. Tambahan pula, kata-kata tersebut sebenarnya telah diucapkan oleh defendan. Suatu penyataan fitnah yang dibuat oleh peguamcara di luar bilik mahkamah, dengan merujuk kepada prosiding, tidak berhak untuk mendapat perlindungan mutlak (lihat ms 489D–E, G). B

(6) Menurut ss 5 dan 6 Akta Fitnah 1957 di dalam slander terhadap plaintif tentang profesyen beliau, tidak sepatutnya ada apa-apa keperluan untuk plaintif membuktikan bahawa beliau telah mengalami kerugian. Di sini, plaintif adalah dan merupakan seorang peguambela dan peguamcara, dan slander yang diakibatkan oleh defendan ke atas beliau dianggap sebagai memperkecil-kecilkan beliau di dalam profesyen beliau (lihat ms 489H–I). C D

(7) Konspirasi merupakan satu kausa tindakan dengan sendirinya untuk menyembunyikan suatu situasi di mana terdapat satu kombinasi dua atau lebih orang yang dengan niat untuk mencederakan seseorang di dalam perniagaannya yang mengakibatkan kerugian pada diri beliau. Kausa tindakan ini adalah berasingan dan berlainan daripada fitnah tort yang dikawal oleh faktor-faktor yang berbeza. Melalui pliding plaintif, mahkamah berpendapat bahawa dakwaan fitnah di dalam surat yang ditulis oleh Jega kepada peguamcara Vijayalakshmi adalah lebih mirip kepada tort konspirasi daripada fitnah (lihat ms 490D–H). E F

(8) Mahkamah tidak dapat bersetuju dengan penjelasan defendan bahawa surat oleh firma peguamcara defendan yang dialamatkan kepada firma guaman plaintif adalah untuk memperoleh penjelasan. Tiada permintaan untuk penjelasan mahupun terdapat apa-apa perkara pokok yang perlu dijelaskan. Isi kandungan tersebut terdiri daripada kenyataan yang menghina, yang tidak benar. Ia menandakan bahawa plaintif merupakan seorang yang mempunyai moral rendah, bernafsu dan kejam, dan kerana ini telah mendedahkan diri beliau kepada kebencian, penghinaan dan cemuhan oleh masyarakat yang berfikiran waras. Walaupun pengeluaran secara umum surat tersebut adalah kepada kakitangan plaintif, defendan telah dianggap bertanggungjawab kerana fitnah apabila pengeluaran umum tersebut adalah kepada pekerja dan/atau ejen plaintif (lihat ms 490I–491A, F). G H

(9) Walaupun defendan telah menjelaskan bahawa kenyataan tersebut ditulis oleh Shanti, tanggungjawab untuk menerbitkannya secara umum timbul melalui pemberian kuasa oleh defendan. Defendan adalah dan merupakan tuan punya tunggal firma guaman tersebut dan Shanti hanya merupakan I

seorang peguam biasa — seorang pekerja kepada defendan. Dengan membenarkan seorang kekitangan menulis kenyataan fitnah sedemikian di atas satu dokumen yang bertujuan dan digunakan oleh firma tersebut, dan membenarkannya bererti tuan punya tunggal firma tersebut telah membuat kenyataan sedemikian. Oleh kerana itu, defendan seharusnya dipertanggungjawabkan (lihat ms 491H–492A).

(10) Kebergantungan defendan terhadap penegasan beliau bahawa kenyataan tersebut ditulis di dalm pejabat peribadi beliau dan selepas itu diletakkan di dalam sampul surat yang ditandakan 'sulit dan peribadi' adalah tidak mungkin sekali. Sebagai seorang peguambela dan peguamcara, defendan sepatutnya peka dengan peraturan dan prosedur yang menghendaki akuan penerimaan salinan writ serahan tersebut diekshibitkan kepada satu serahan afidavit. Dengan amalannya, beliau sepatutnya mengetahui bahawa tidak ada kerahsiaan untuk dokumen ini. Oleh itu, tidak mungkin sekali beliau telah buat sebagai mana yang beliau dakwa (lihat ms 492C–E).

(11) Plaintif tidak memuaskan hati mahkamah bahawa defendan telah mengarahkan Shanti untuk mengesahkan kandungan di dalam deklarasi statutori tersebut. Shanti adalah dan merupakan seorang dewasa dan ahli Majlis Peguam. Mahkamah tidak berpendapat satu perbuatan serius seperti membuat pengakuan satu deklarasi statutori, Shanti boleh dipaksa berbuat demikian. Beliau mesti telah berbuat demikian, besar kemungkinan untuk melanjutkan konspirasi yang telah timbul melalui dorongan oleh defendan dan Jega. Tetapi, mahkamah tidak yakin untuk membuat tuduhan terhadap defendan kerana membuat kenyataan fitnah tersebut (lihat ms 493F–G).

(12) Setelah mempertimbangkan keterangan secara menyeluruh dan terutamanya daripada kandungan fitnah tersebut dan bagaimana ia dilaksanakan, mahkamah mendapati tort tentang konspirasi dibuktikan. Mahkamah mengenal pasti corak tindakan-tindakan yang dilakukan oleh kumpulan defendan untuk selaras dengan serangan mereka ke atas reputasi plaintif dan profesyen beliau. Ini adalah dengan objektif utama untuk memaksa plaintif mempengaruhi isteri beliau untuk mencapai kompromi tentang penyelesaian harta pusaka tersebut. Walaupun defendan telah menafikan dengan nyata apa-apa penglibatan di dalam komplot untuk mencemarkan profesyen plaintif, bagaimana pun mahkamah mendapati bahawa beliau adalah terlibat di dalam keseluruhan konspirasi sebagai mana yang dapat diperhatikan melalui tindakan beliau di dalam mengeluarkan kenyataan fitnah tersebut dengan perkaitan dan bersama yang lain yang telah dinamakan. Di dalam konspirasi, tort dilakukan sejurus selepas perjanjian antara yang membuat konspirasi tersebut dibuat, dan ia berterusan dilakukan asalkan kombinasi tersebut wujud. Mahkamah memutuskan bahawa defendan bertanggungjawab

terhadap plaintif di bawah kausa tindakan konsprasi tersebut (lihat ms 494B–F).

(13) Memandangkan slander di dalam kes ini melibatkan plaintif di dalam profesyen beliau dan mengatakan beliau melakukan jenayah yang boleh dihukum satu tempoh pemenjaraan, tidak ada keperluan untuk plaintif membawa masuk bukti ganti rugi khas. Tanpa diragui, kenyataan fitnah oleh defendan bersifat teruk dan serius. Perbuatan defendan di dalam mengeluarkan secara umum kenyataan fitnah tersebut di dalam tempoh yang substantif; dan dengan niat jahat, tentu sekali mendedahkan plaintif kepada kebencian, penghinaan dan cemuhan yang amat sangat oleh masyarakat. Kaedah penerbitan fitnah tersebut, terutamanya yang di atas dokumen-dokumen rasmi dan perundangan adalah penuh kebencian. Ia menunjukkan sifat tidak hormat langsung defendan tentang imej, integriti dan maruah profesyen perundangan yang mana beliau sendiri merupakan seorang ahli (lihat ms 495A–B, D–G).]

Notes

For cases on conspiracy, see 12 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 45–54.

For cases on libel and slander, see 12 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 231–234.

Cases referred to

Brunswick v Harmer (1849) 14 QB 185 (refd)
Dashtgard v Blair (1990) CCLT (2nd) 284 (refd)
Demopolis v Peoples National Bank 796 p 2nd 426 (Wash 1990) (refd)
Gulf Oil Ltd v Page [1987] 1 Ch 327 (refd)
Henry Wong Jan Fook v John Lee & Anor [1976] 1 MLJ 231 (refd)
Kennedy v Hilliard (1859) 10 Ir CL Rep (NS) 195 (refd)
Lawson v Burns (1976) 6 WWR (refd)
Lincoln v Daniels [1962] 1 QB 238 (refd)
MGG Pillai v Tan Sri Vincent Tan Chee Yioun [1995] 2 MLJ 493 (refd)
Munster v Lamb (1883) 11 QB 588 (refd)
Osborn v Thomas Boulter [1930] 2 KB 226 (refd)
R v Paine (1696) 5 Mod Rep 163 (refd)
R v Skinner (1772) Lofft 55 (refd)
Rahim Radhas v Bachcha Lall 1929 AIR 214 (refd)

Legislation referred to

Defamation Act 1957 ss 5, 6
National Language Act 1963/67 s 8
Rules of the High Court 1980 O 18 r 8

Gurbachan Singh (*Malik Imtiaz Sarwar* with him) (*M Segaram & Co*) for the plaintiff.

A *Mahadevi Nadchatiram* (*RS Sothi* with her) (*Mahadevi Nadchatiram & Partners*) for the defendant.

James Foong J:

Introduction

B These two cases, involving the same parties in their respective capacity as plaintiff and defendant in both the suits, are tried together. Both involve, primarily, the cause of action of defamation. For ease of reference I shall refer to the Civil Suit No S5–23–08–97 as case 'Suit 08', and Suit No S2–23–04–97 as 'Suit 04'.

C In order to comprehend the substance and essence of these two cases it is necessary to initially describe the parties. Then their relationship with each other. Followed by their relationship with other major characters mentioned in the pleadings and the evidence adduced.

The plaintiff and the defendant are both advocates and solicitors. The D plaintiff is the brother-in-law of the defendant. He is married to the defendant's eldest sister by the name of Vijayalakshmi Devi (Vijayalakshmi) who is also an advocate and solicitor. The defendant has a few other brothers and sisters. Those associated with these actions are:

Jegadevan a/l Nadchatiram (Jega), a brother of the defendant; he is an advocate and solicitor;

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Dr Mahadevevan a/l Nadchatiram (Dr Mahadevan), a brother of the defendant; he is a medical practitioner;

Datin Saraswathy Devi (Saraswathy), a sister of the defendant; she is an advocate and solicitor;

F Kamala Devi (Kamala), a sister of the defendant; she is an advocate and solicitor;

Datin Danapakia Devi (Danapakia), a sister of the defendant;

Suseela Devi (Suseela), a sister of the defendant.

The protagonist of the episode leading to the claims in these cases is the G plaintiff's daughter — Shanti. She too, is an advocate and solicitor. She has a brother called Nadchatiram Thiruchelvasegram (Nad).

It is a fact, undisputed by all, that the principle cause of all the differences between these family members which started these actions, and numerous others, is the distribution of wealth — properties left behind by the patriarch: Nadchatiram s/o Muttucumaru (deceased) — the father of H the defendant. After Nadchatiram (deceased) passed away, there were attempts to settle his estate among his surviving children. But these failed — leading to a series of suits by the siblings against each other. Much of the allegations in these two cases before me are borne out of these contested suits.

I According to evidence adduced by the defence, and not denied by the plaintiff, Vijayalakshmi had refused to execute a settlement agreement for the distribution of the deceased estate property. This led to the filing of civil suits in the Seremban High Court, one of which bears the

number 22–61–93 (Suit 61) by Vijayalakshmi and two others against the defendant, Jega and Suseela. This Suit 61 alleges, inter alia, that Jega had committed misfeasance, fraud and breach of trust in handling the deceased estate property. Acting for Vijayalakshmi, through a power of attorney given under her hand, is her husband, the plaintiff. Laying the blame on the plaintiff as the mastermind behind the actions of Vijayalakshmi, the plaintiff claims that the defendant conspired with Jega, Saraswathy and his own daughter — Shanti — to defame him. The objective is and was to force Vijayalakshmi to consent to the estate property settlement and to withdraw the mentioned suit (as well as others) against Jega, the defendant and Suseela. The sting of the defamation is — incest by the plaintiff on Shanti, a daughter much loved by her parents — Vijayalakshmi and the plaintiff, but unfortunately a love not reciprocated.

It is against this backdrop that the sequence of allegations of defamation and conspiracy by the plaintiff is based. For ease of reference I shall adopt a chronological approach rather than those as set out by the plaintiff in his statement of claim.

The plaintiff's case

First defamation

The events leading to the first allegation of defamation is this. On 29 September 1993 the defendant acting for herself, Jega and Suseela applied to the Seremban High Court to strike themselves out as defendants of Suit 61. When this application was heard on 11 October 1993 the defendant handed in a written submission to the learned judge. This entire submission, both the English and the Bahasa version is found in pp 1–12 of encl 54. In paras 11 and 14 it says the following:

> ... If ever these proceedings were instituted it was done by Thiruchelvasegaram, the first plaintiff's husband, for he has been deprived of his daughter with whom he has intensely in love and the daughter cannot stand or bear his sight. Even recently, he requested as a precondition to withdraw all cases and send a message through the second plaintiff to the second defendant that his daughter be sent back.
>
> ... The first plaintiff's husband is a slimy creep and an incestuous bastard for having been caned by the first defendant (Jega) for his immoral activities against his daughter he is now using the court as a medium to take revenge against the first defendant. Should the court waste time unnecessarily? The poor child how much mental agony she has undergone? Believe me my Lord this is the truth.

The Bahasa version is:

> ... Jika prosiding ini dibawa ia telah dibawa oleh Thiruchelvasegaram, suami plaintif pertama, sebab dia tidak mempunyai anaknya yang dia sayang dan anaknya tidak sukanya. Baru-baru ini dia minta sebagai syarat lebih dahulu, untuk menarik-balik semua kes, melalui plaintif kedua kepada defendan kedua bahawa anaknya di hantar balik.
>
> ... Suami plaintif pertama adalah seorang kekam dan seorang sumbang kadim yang dilahir luar nikah dan telah dipukul oleh defendan pertama oleh

A kerana kelakuan tidak baiknya terhadap anaknya dan oleh itu menggunakan mahkamah ini untuk membalas dendam terhadap defendan pertama. Patutkah mahkamah ini membazir masa? Kasihan anak itu yang mengalami banyak penderitaan? Percaya saya Yang Arif ini adalah benar.

By these paragraphs (both in English and Bahasa Malaysia) the plaintiff claims he is being defamed by the defendant. He submits that the words so stated imputes him to be a person of low moral, who had committed the sexual crime of incest. It has discredited him and exposed him to hatred, contempt and ridicule in the eyes of the right thinking members of society.

Second defamation

The second allegation of defamation results from the following:

Finding these statements (those in the alleged first defamation) offensive, Vijayalakshmi instructed her solicitor, Mr Satharuban (Satha), to apply to strike out the offensive words, arguing, inter alia, that the plaintiff was not even a party to Suit 61. In the course of the hearing of this application to strike out before the learned judge, the defendant submitted another written submission dated 1 November 1993. In it, she uttered further alleged defamatory remarks of the plaintiff in this manner:

> ... The allegations against M Thiruchelvasegaram is justifiable. He is the mastermind to institute all these proceedings against the first defendant who gave him a good whacking for having molested and trying to commit incest with his daughter. The daughter herself has filed proceedings against the father. If there was no truth in it she being an advocate and solicitor, having knowledge of the law and given a Western education and being a very intelligent and brilliant member of the Bar who qualified at the age of 21 would not make such a serious allegation against her own father if there was no truth in it.
>
> ... My Lord in the above paragraphs we have clearly explained the facts in issue for the root of all these proceedings was because M Thiruchelvasegaram's daughter sometime in 1989 complained to the first defendant that while she was an infant her father tried to sexually assault her. The first plaintiff's daughter has put an affidavit that her father's affections towards her was questionable. Actually in 1989 she did lodge a police report in Shah Alam Police Station and in the original copy of the Police Report she wrote 'incest' in the report and the second defendant felt sorry for the first plaintiff who was begging and crying with her: 'Please don't land my husband into trouble' and deleted from the original copy of the Police Report the word 'incest' written. The second defendant loves the first plaintiff very much though the first plaintiff's own daughter wanted the father to be charged slowly spoke round the first plaintiff's daughter and withdrew the complaint. The second defendant wanted the first plaintiff to live with her husband happily but unfortunately M Thiruchelvasegaram was not satisfied and on other occasions according to his daughter when the first plaintiff was overseas has repeated his actions.
>
> ... My Lord, how much because of this the whole family has undergone mentally. A name which was earned by the late Mr Nadchatiram was destroyed by Mr Thiruchelvasegaram due to lust of the flesh of his own daughter. Excessive parental love could turn to lust.

... Whereas my Lord in this case the allegations of incest are not scandalous. They are facts in issue of first plaintiff's husband who is the instrumentor of bringing the proceedings against the first defendant. If any of the beneficiaries really thought that there was fraud why should they wait 21 years. Most of the beneficiaries are professionals well versed with the law. They could have brought it earlier. The root cause was the incestuous relationship confirmed by the daughter. Therefore none of the above paragraphs should be expunged.

... There are a multiciplity of cases before Your Lordship. All was instrumented by Mr Thiruchelvasegaram to taking revenge against the first defendant for the caning he had received. Must the court waste time just because one person due to vicious nature has instigated persons and taking advantage of the first plaintiff's unstable mental condition and filing so many proceedings.

... The third plaintiff is a victim of M Thiruchelvasegaram's favours a mastermind who has used the third plaintiff against the first defendant successfully in order to gratify his revenge against the first defendant.

... My Lord, at this preliminary stage M Thiruchelvasegaram is trying to get the third plaintiff to expunge all these allegations. In actual fact, M Thiruchelvasegaram is worried that his incestuous act has come out into the light. He is trying to expunge this as scandalous when it is actually a fact in issue because he is scared his dirty behaviour if this matter goes on appeal to the Supreme Court and he being a senior lawyer is himself scared of the exposure.

... In this case the allegations made against the second and third plaintiffs are true and justifiable and the allegations made against M Thiruchelvasegaram are justifiable because it has been confirmed by his daughter as matters relevant to the facts in issue.

According to the plaintiff, the above statements were published to the clerk or servant of the defendant who typed these documents and had them translated into Bahasa Malaysia. And by these statements it was meant and was understood to mean that the plaintiff had committed incest with his daughter — Shanti, which the plaintiff vehemently denies.

Third defamation

The alleged third defamation happened on 12 October 1993. It was at the court house at the Seremban High Court. In the version of the plaintiff, the defendant was in the court room when she maliciously and falsely uttered, in the presence of Satha and many other lawyers and litigants so present, the following words:

The several actions were brought by Vishi's husband to cover-up the incest committed by Segaram with Shanti.

('Vishi', the plaintiff explains, is the family name of his wife Vijayalakshmi and 'Segaram' is himself).

The court was at that material time not in session.

Fourth defamation

The fourth defamation as set out in para 11.6 of the statement of claim alleges that the defendant falsely and maliciously, in furtherance of a

A concerted common plan directed and instigated Jega, for whom the defendant was his solicitor, sent a letter dated 12 November 1993 to Satha, solicitor of Vijayalakshmi with the following warning:

> Please also take notice that the defendant will be calling Nadchatiram s/o Thiruchelvasegaram and Satharuban Sivasubramaniam as his witnesses at the
B trial whom I believe will be able to give material evidence of an allegation on incest which evidence are relevant to prove the motive behind this suit.

Again by these words, the plaintiff's claims meant and is understood to mean that he has committed incest with his daughter, an allegation which is false.

C Fifth defamation

The next claim of defamation is in a letter by the defendant's solicitor's firm addressed to the plaintiff's legal company dated 2 September 1995. It contains in paras 3–6 the following:

D

> Our client (the defendant) further wishes to inform you (the plaintiff) that it is your daughter who goes round making allegations against you and in fact she wanted to lodge a police report against you and our client stopped it.
>
> Our client states that she is very embarrassed that you are a source of disgrace to the family and to her and she wonders how you manage to walk around and our client has even stopped taking cases and going to court because of you.
E You were a source of embarrassment in London and you are now continuing it here and further her tuition money was used by Vijayalakshmi to clothe and educate you in London.
>
> Our client wants you to take the Mahabarat and read it. Our client feels that you are a reincarnation of Duryodhana who was so lustful and greedy that the whole of the Kuru dynasty was destroyed. Similarly your whole family will be
F destroyed.
>
> Please go to the temple and start praying. There is no smoke without fire.

According to plaintiff's witness, Kong Foo Sang (PW5), a clerk in the plaintiff's legal firm, he first found this letter in the plaintiff's law firm's fax machine. It came through by fascimile. He has read it, so did two other staff
G in his firm, before it was shown to Vijayalakshmi, who in turn after reading it, gave it to the plaintiff.

The plaintiff insists that the paragraphs referred to in this letter meant that he has committed incest or a serious sexual crime, being lustful, mean, cruel, wicked, dishonest; a pauper; and not fit to be a practising lawyer; and that his entire family will be destroyed.

H

Sixth defamation

In response to the defendant's above letter, the plaintiff on 5 September 1995 wrote to the defendant's firm demanding an apology and the withdrawal of the offending words. This letter was despatched by PW5 to
I the defendant's firm. According to PW5, when he went about his task he noticed that the defendant not only acknowledged receipt of this letter on the acknowledgement copy but also instructed Shanti, who worked for the defendant as a legal assistant, to write thereon the following:

I, Shanti (K/P: 69096–10–5388) shall give evidence against your client and lodge a police report in due course. A

Sgd: Shanti and a thumb-print affixed.

By this, the plaintiff asserts is defamatory and has similar connotation as that of the fifth defamation.

B

Seventh defamation

As the result of the above events the plaintiff proceeded to file Suit 04. When the sealed copy of the writ was extracted, PW5 was instructed to serve it on the defendant. This he did on 22 February 1997. Instead of the normal practice of affixing a signature at the rear of the serving copy, the C defendant, according to PW5, wrote and while writing read out loud to her staff present the following:

Segaram,

I am not your enemy but your friend. I have not read your summons, it is most unfair for you to chase and harass me continuously since London days in 1960's — that time you wrote to complain about me going out with white boys D to my parents and now you keep chasing me.

This the plaintiff avers is defamatory in the sense that it gives an impression that he is a womanizer, lustful, immoral and mean; that he is a busybody, a trouble maker and unfit to be an advocate and solicitor.

Besides claiming publication of this statement to the defendant's staff E and PW5, the plaintiff also declares that these remarks will be read by the honourable judges, registrars and staff of the Kuala Lumpur High Court since this copy of the writ would be exhibited in the affidavit of service as proof of service.

F

Eighth defamation

In response to the above, the plaintiff through his solicitor wrote a letter dated 24 February 1997 to the defendant personally, to demand the withdrawal of the above statement and an apology. This letter was served personally on the defendant by PW5 on 24 February 1997. On this occasion, PW5 testified that he saw the defendant writing on the G acknowledgement copy:

I will fix you up, and, while writing, read out loud in the presence of her staff, Shanti and PW5.

After that, the defendant made Shanti sign beneath this message.

H

Besides these, the defendant also wrote on the same document the following:

You have been playing havoc and your threats will be exposed in court; I am prepared to go ahead and fight and prove all the allegations.

and beneath it she signed.

I

To the plaintiff, these statements meant and are taken to mean similar imputations as those stated for the earlier alleged defamatory remarks.

(In respect of the seventh and eighth allegation of defamation, the plaintiff claims it through Suit 08).

Ninth defamation

In a statutory declaration affirmed by Shanti on 4 May 1994 the following is sworn:

> That in September 1993 I had filed a writ of summons in the High Court at Kuala Lumpur vide Guaman Sivil No S2–22–562–93 against my father. This writ was filed following an incident of incest committed by my father.
>
> I have now been asked by both my uncle Mr Jegadevan Nadchatiram and Aunty Ms Mahadevi d/o Nadchatiram to withdraw the writ and the allegations of incest against my father.
>
> In the interest of my family I am now willing to withdraw all allegations made by me against my father Mr M Thiruchelvasegaram.

This statutory declaration has been, according to the plaintiff, used by the defendant and those whom she conspired with as an exhibit on six occasions in legal proceedings, and once in an advocate and solicitor disciplinary board action against the defendant.

For this, the plaintiff accuses the defendant in collusion with Jega, falsely and maliciously 'prepared, dictated and approved' this statutory declaration, and 'directed, procured and instigated' Shanti to affirm it.

The plaintiff adds that in the preparation of this statutory declaration the clerks involved in the typing of this document would have known of the contents. Further, he said that the defendant published this declaration to the defendant's brothers and sisters.

Again, the plaintiff insists that the meaning attributed in this declaration is similar to those stated for the earlier alleged defamations.

Conspiracy

In paras 13–16 of the plaintiff's statement of claim in Suit 04, the plaintiff alleges conspiracy by the defendant with Jega, Saraswathy and Shanti to defame and injure his character. For this he has been put into considerable trouble, inconvenience and expense and had suffered loss and damages in engaging counsel to defend his reputation and honour. The objective of those conspirators, according to the plaintiff, was for the sole purpose of forcing Vijayalakshmi to withdraw the civil actions against Jega, the defendant and Suseela and not to defend other actions brought by the defendant.

In the particulars of conspiracy, the plaintiff set out the following:

(1) The above stated parties forced Shanti to file a suit (Kuala Lumpur High Court Suit No S2–22–562–93) against the plaintiff, Vijayalakshmi and Satha. This suit contains allegation of incest by the plaintiff on Shanti.

(2) This suit (S2–22–562–93) is frivolous and vexatious and an abuse of the court process.

(3) This suit (S2–22–562–93) was referred to and its statement of claim exhibited in several legal proceedings.

(4) The defendant unlawfully acted for Shanti in this suit (S2–22–562–93) when Saraswathy was, as an advocate and solicitor, disqualified from acting for Shanti.

Injury and claim

Finally, it is the contention of the plaintiff that the aforesaid defamatory remarks and actions of the defendant, including those done in conspiracy with persons mentioned, have seriously injured his reputation and his profession; he is brought into public scandal, odium and contempt. For these, he claims that he has suffered damages.

For damages, in Suit 04 the plaintiff is claiming damages of RM30m. In Suit 08 he claims for RM10m. Both are with cost. In addition, he is asking for an injunction to restrain the defendant from repeating these defamatory statements.

The defendant's defence and version

In order to keep firmly in focus on the issues of these two cases, I shall set out the defendant's defence and her version of what happened according to the chronology laid out in the plaintiff's case.

First defamation

The defendant's defence to the first alleged defamation are these:

First: She was in court on the day to receive a decision of the court, and as such has no knowledge of this plaintiff's allegation.

Second: She did not prepare this submission. It was the work of Shanti, who typed and prepared it herself. In fact the defendant claims that she had no knowledge of it until this matter reached the appellate stage.

Third: She asserts that Justice Faiza, the judge who presided in Suit 06, had expunged this alleged defamatory statement from the court records after Vijayalakshmi's application to strike it out. Since these statements were expunged they can no longer be considered defamatory.

Fourth: All remarks in this document are protected by absolute and qualified privileges.

Fifth: She claims justification to what is uttered.

Sixth: If there was publication to her brothers and sisters, these people are or were parties to the action or other related cases.

Second defamation

The defences for the second alleged defamation are very similar to that of the first charge of defamation.

A Third defamation

According to the defendant there is absolutely no truth in what is asserted by the plaintiff's in the third accusation. She requires the plaintiff strict proof thereof.

B Fourth defamation

The defendant denies knowledge of the letter which contains the fourth alleged defamation. She insists that this letter is not written by her and denies any responsibility to it.

C Fifth defamation

Though the defendant admits writing this letter which contains the fifth alleged defamation she declares that she typed it herself and placed it in a sealed envelope marked 'private and confidential'. For this, she should not be liable if the letter was read by others. In this letter the defendant explains
D that she was merely seeking clarification, and never intended to defame the plaintiff.

Sixth defamation

E The defendant denies knowledge and responsibility on the claim by the plaintiff of the sixth defamation. She insists that what was written on this document was done by Shanti. In any event, the defendant is of the opinion that the words so written are not defamatory and even if it is, it is justifiable.

Seventh defamation

F Firstly, the defendant denies that the statement alleged in the seventh complaint is libellous. Her intention for this statement was to offer a friendly advice to the plaintiff and to request him to leave her alone. This was largely caused by an incident on 22 September 1989 at the Shah Alam Holiday Inn Complex. There, she disclosed that the plaintiff harassed her
G by puncturing four of her car tyres and smashing the windscreen. This incident was finally settled at the Petaling Jaya police station after the intervention and assistance of the police force. Besides, while in London when the plaintiff and the defendant were students the defendant recalls that the plaintiff had shown interest in her. Out of jealousy, the plaintiff had complained to the defendant's parents that the defendant was dating
H Caucasian men rather than those from the Ceylonese community. By this, what was published is justifiable.

Secondly, the words written do not mean what the plaintiff had inferred them to mean and even if they did, it is fair comment and made without malice.

I Thirdly, these were written in the privacy of the defendant's office and when completed, it was inserted in a sealed envelope marked 'Segaram, Private and Confidential'.

Eighth defamation

For the eighth alleged defamation, besides the denial that she instructed Shanti to write on this document, the defences are virtually the same as those advanced in the reply to the seventh defamatory allegation.

Ninth defamation

The defendant protests that the ninth alleged defamation is attributed to her wrongdoing. She stress that this was done solely by Shanti, and that she derives no benefit from such a document.

Conspiracy

On the charge of conspiracy the defendant ardently denies her involvement. She stresses that there are avenues opened to the plaintiff to strike out any legal process found to be frivolous, vexatious or an abuse of the court process, and if they are documents exhibited in any legal proceedings, these documents are protected by privileges. Finally, as an advocate and solicitor of the High Court of Malaya, the defendant claims that she is entitled to act for Jega and Shanti in any legal action.

General plea

After settling out the substantive defences described above, the defendant in para 27 of her defence declares this:

> The defendant relies on all the defences to defamation such as fair comment, absolute and qualified privilege, justification and wherever she has overlooked to insert these defences she will invoke the defences as her defence that may be applicable to the various paragraphs wherever relevant since the plaintiff's statement of claim is a bit messy and should have pleaded and sued each defamation in a separate suit.

I must express my utmost indignation over this manner of pleading. It has certainly breached all set rules for proper legal pleading. The primary objective of any statement of defence is to inform the plaintiff of precisely how much of the statement of claim is admitted or denied and on what ground and fact it is based. This is aimed at preventing surprises — see O 18 r 8 of the Rules of High Court 1980. In a defamation suit, it is well settled that a defendant must expressly plead the particular defence he wishes to rely on against each specific charge of defamation with full particulars, ie the ground and fact on which it is based. For example, in a defence of qualified privilege it is not even enough to state generally that the defamatory matter is a privileged communication. The facts and circumstances arising from the privilege should, unless they appear on the face of the statement of claim, be stated in a concise manner so that the ground on which the privilege is claimed may appear. This similarly applies to the defences of absolute privilege and justification — see *Bullen & Leake and Jacob's Precedent of Pleadings* (12 Ed) at pp 1174, 1176 & 1179. In *Henry Wong Jan Fook v John Lee & Anor* [1976] 1 MLJ 231, the Federal Court even ruled

A that in a defence of fair comment, failure on the part of the defendant to plead that the matter is of public interest entitled the plaintiff to strike out this defence of fair comment even though the defence of fair comment was generally pleaded. The need to be clear, and with particulars is essential. Otherwise, the plaintiff, as well as the court, will be confused and left uncertain over an issue — see also *Gatley on Libel & Slander* para 27.1 B (9th Ed).

This general plea of the defendant relates to no particular and distinctive allegation in the statement of claim. The defences raised are not supported by any disclosed facts and grounds. By the defendant's own admission, this paragraph is intended as a net to capture anything that has C been overlooked. This is certainly unacceptable as it will confuse the plaintiff and take him by surprise. If the defendant is displeased with the so-called 'messy' pleadings of the plaintiff she can avail herself of all the remedies provided under the rules and procedure as set out under the Rules of High Court; certainly it cannot be reciprocated with this generalized form of pleading. For this, I shall not entertain the defences raised in this D paragraph.

Defendant's counter-claim

The defendant has a counter-claim against the plaintiff in Suit 04. It is for defamation and nuisance. As damages, the defendant named a sum of E RM100m. There is no necessity for me to disclose the full contents and effects of this counterclaim since the defendant has made no reference to it in her submission. Further, the defendant has confirmed, before me in open court on the day when submissions for these cases were made, that she is not pursuing this counterclaim of hers. By this, I take it that she is F abandoning it.

Analysis of the case

Justification

G Inevitably the main contention of the parties in this case reverts back to the question of whether there is any truth in the claim of incest by the plaintiff on Shanti. A determination of this will certainly settle many issues, particularly on the defence of justification. For this reason, I shall deal with this defence first.

H The claim by Shanti of incest was expressly affirmed by her before me in open court held in camera. Only this witness and counsel for the parties were present. This mode was adopted for two reasons: To prevent embarrassment to this witness. The other, more compelling reason, is to prevent influence and intimidation by the plaintiff and the defendant, for there was evidence before me then, that both these two persons have I powerful influence on her, though she is now 29 years of age, holds a degree in law from a university in the United Kingdom has been called to the Malaysian Bar.

Shanti testified that the plaintiff committed incest on her on the night of 30 July 1989 at her family's residence — No 18, Lorong Batai Barat, Damansara Heights, Kuala Lumpur. Residing in this house then were: the plaintiff, Vijayalakshmi, Nad and Shanti. According to Shanti, on that fateful evening, while Vijayalakshmi and Nad had gone outstation to Port Dickson to visit some relatives, the plaintiff entered her bedroom in the middle of the night naked and committed incest on her. At this stage, I specifically asked her to reconfirm this since she was very hesitant to mention the word incest. Despite my repeated requests for her reconfirmation she took a rather long time to answer. By her demeanour, I find that she was either unsure of whether to confirm this fact or reluctant to disclose. Then when pressed on for some particulars of this incident she refused to elaborate. This witness then testified that after the incident, she told her mother and brother of what happened. This was the day after Vijayalakshmi and Nad had returned from outstation. When told, both Vijayalakshmi and Nad were very angry with the plaintiff. But bending to the plea of Vijayalakshmi that this matter will shame the family, this witness said that she refrained from reporting this crime to authorities. Instead, she told the defendant of this affair a couple of months later. Sometime in September 1989 at a Chinese restaurant, she also revealed this incident to her uncle, Jega. There were some attempts by the defence to corroborate this incest episode with two events. The first is in the writing of a police report (police report) by Shanti at the Petaling Jaya police station on 22 September 1989 after the incident at the Holiday Inn Complex. According to the defendant and Shanti, Shanti had initially written on a police report against the plaintiff mentioning this incestuous relationship. But this part was subsequently deleted after an appeal by Vijayalakshmi and on the advice of the defendant. The reason: 'not to wash dirty linen in public'. The second involves an incident in an Indian temple in Senawang, near Seremban. This took place also soon after the commotion at the Holiday Inn Complex. According to the defence, Shanti was taken to the temple by her parents to perform certain religious prayers. When Jega came to know of this incestuous affair, he together with Dr Mahadevan went to this temple and assaulted the plaintiff. The defence claims that this assault was actuated by the disclosure by Shanti of the incest.

A B C D E F G

After careful perusal of all the relevant evidence and having the opportunity to observe the demeanour of the witnesses I come to the conclusion that this claim of incest is not proved, even on the balance of probability. The following are my reasons:

First: The residential address where the incest was alleged to have occurred is stated by Shanti as: No 18, Lorong Batai Barat, Damansara Heights, Kuala Lumpur. But this court is possessed of evidence that this house, though belonging to the plaintiff's family, was let out during this period to an oil company. The plaintiff's family was, during this period, residing at a different address — No 21, Lorong Batai Barat, Damansara Heights, Kuala Lumpur. Though these two houses may be close by, but to my mind, a rape victim will not make mistake to the place where this awful incident happened, unless the incident is concocted.

H I

Second: The defendant and Shanti had insisted that on the police report the word 'incest' was deleted. This police report was tendered as evidence and no such word exists or was cancelled over. The defendant then tried to explain that there was a draft police report before this police report was made. This, however, seems improbable when DW4, a former senior police officer enlightened this court that even a discarded draft police report, once written, must be returned to the police authorities. And the defendant did not produce this draft report with the word 'incest' cancelled over.

Third: PW4, an advocate and solicitor, testified that at the invitation of Shanti he had a meeting with Jega and Shanti at the PJ Hilton Hotel in July 1998. The objective of this meeting was to use the good office of PW4, who enjoyed a close relationship with Nad, to persuade the plaintiff to settle the Nadchatiram's family dispute. At this meeting, according to PW4, Jega disclosed to him this embarrassing incestuous affair in front of Shanti. When demanded by Jega of Shanti to confirm, Shanti reluctantly did. But when Jega excused himself to go to the washroom, Shanti immediately confided in PW4 that this liaison never happened. Such strange behaviour of Shanti is certainly inconsistent with the action of a person who harboured strong resentment against a wrong done to her. Though Jega and Shanti admitted to this meeting, they however denied Shanti's subsequent retraction of the admission. I do not believe them. I find the version told by PW4 more probable. PW4 is an outsider and stands to gain nothing by testifying. He appears forthright and his evidence is not shakened under cross-examination.

Fourth: Incest is a serious crime. The complainant, an adult, would have reported the matter to the authorities immediately after the experience, if she is not too embarrassed or prevented by family plea. Here, it was not carried out because of the latter. According to Shanti her mother and the defendant pleaded with her not to publicise such an indecent matter as it would destroy the family. But this does not tally with what happened subsequently. This allegation was in fact extensively published in a great number of documents used in civil proceedings, including a statutory declaration. By this method whatever dirty linens that needed to be washed are fully displayed in public, destroying the very objective of not reporting this matter initially. But why? I have a strong belief that this approach was contrived and carried out in this manner because if a police report is made and upon investigation found to be untrue, then the maker of the police report can be charged for making a false report. By this other approach, the objective of damaging the plaintiff with this defamatory allegation is achieved without the maker having to face criminal prosecution, even though this allegation of incest is false.

Fifth: Shanti did not immediately run away from the place where the incest was alleged to have occurred. This is strange. One would expect the victim of such an occurrence to distance herself from both the wrongdoer and the place where it happened at the earliest opportunity. This is either to prevent reoccurrence or to distance herself from the detestable sight of the wrongdoer and venue where it happened. This was not the case here.

But why? Not that Shanti was without transport or the fear of disappearing. She was then 20 years of age and was exposed to living overseas independently. She had the use of a car and if she had desired to go she could have. Instead, she not only remained but went on a holiday, some four days after the incident, to Thailand with the plaintiff's entire family together with a family friend. She only left home some three weeks later. The reason for this was not due to the incest but her misunderstanding with her mother who had incessantly complained that she should complete her final year law study in England.

Sixth: Both Vijayalakshmi and Nad had given evidence to rebut this allegation of Shanti against her father. Both affirmed that they have no relatives living in Port Dickson to warrant their overnight visit on that particular day of the incident. They claim that they were actually at home on the night in question and no such incestuous affair took place or was complained of. Together with other evidence before me, I have no reason to disbelieve them.

Analysis on each alleged defamatory statement

Having established no truth on the accusation of incest, I shall now proceed to analyse each of the alleged defamatory statements against the defences pleaded.

First and second defamation

These are the submissions of the defendant to the learned judge. The defendant has claimed that she made it as counsel for Jega and for herself personally as a party in Suit 61. For this, she is entitled to be protected by absolute privilege.

It is clear that:

> The authorities established beyond all question this: that neither party, witness, counsel, jury, nor judge, can be put to answer civilly or criminally for words spoken in office; that no action of libel or slander lies, whether against judges, counsel, witnesses, or parties, for words written or spoken in the course of any proceeding before any court recognised by law, and this though the words were written or spoken maliciously, without any justification or excuse, and from personal ill will or anger against the party defamed — per Lopes LJ in *Royal Aquarium v Parkinson* [1892] 1 QB 431 at p 451.

It is immaterial whether such proceedings take place in open court or in private and whether they are final or of a preliminary nature — see para 13.3 of *Gatley on Libel And Slander* (9th Ed).

The rationale for this is expressed by Pigott CB in *Kennedy v Hilliard* (1859) 10 Ir CL Rep (NS) 195 as being: 'founded on public policy, which requires that a judge, in dealing with the matter before him, a party in preferring or resisting a legal proceeding, and a witness in giving evidence, oral or written, in a court of justice, shall do so with his mind uninfluenced by the fear of an action for defamation or prosecution for libel.

But what happens if an advocate or a witness makes a statement of another person, while in the course of legal proceedings, which is false and/

A or with malice and/or irrelevant? The answer to this is found in the decision of the Court of Appeal of England in *Munster v Lamb* (1883) 11 QB 588 which announced that no criminal prosecution or civil libel can be maintained against such defendant. And this is all for the sake of public policy as elaborated earlier. I find much favour with this proposition since, as explained by Brett MR in the same case at p 604:

B

> If the rule of law were otherwise, the most innocent of counsel might be unrighteously harassed with suits, and therefore it is better to make the rule of law so large that an innocent counsel shall never be troubled, although by making it so large counsel are included, who have been guilty of malice and misconduct.

C Mr Malik, counsel for the plaintiff, seems to take the view that this rule is with restrictions. He cited an Indian case of *Rahim Radhas v Bachcha Lall* (1929) AIR 214 which referred, per incurim, a passage from Mathew J (the judge of first instance in *Munster v Lamb* which says:

> Words spoken by an advocate in the course of the defence of his client,
D however defamatory they may be of the prosecutor, are not actionable, *provided they are relevant to the matter at hand, and spoken in good faith.* (Emphasis added.)

But such view was not adopted by the appellate judges of the Court of Appeal when *Munster v Lamb* was brought before them. In fact, it
E contradicts their Lordships' basic rational of preventing any pressure on counsel or parties when they present their case before the court. Any exceptions or proviso attached to this rule on the freedom to advance a prosecution or defence without fear of an action for libel and slander will certainly defeat this concept on administration of justice as a public policy. In my view there must be no restriction placed in the way of this principle.

F What then, one may ask, of a person who uttered defamatory remarks in legal proceedings either as counsel or while acting on their own which have no relevance to the case at hand and with malice? Is there any prevention or remedy against any abuse? Lord Mansfield in *R v Skinner* (1772) Lofft 55 has this to offer:

G

> If the words spoken are opprobrious or irrelevant to the case, the court may take notice of them as a contempt and examine on information. If anything of mala mens is found upon such enquiry, it will be punished suitably.

Having determined this rule of absolute privilege, the next course is to examine the extent or the categories of situation it covers Devlin LJ in
H *Lincoln v Daniels* [1962] 1 QB 238 limited the application of this principle to three. They are at pp 257–258:

> This (the first) category covers all matters which are done coram judice. This extends to everything that is said in the course of proceedings by judges, parties, counsel and witnesses, and includes the contents of documents put in as evidence. The second covers everything that is done from the inception of
I the proceedings onwards and extends to all pleadings and other documents brought into existence for the purpose of proceedings and starting with the writ or other document which institutes the proceedings. The third category is the most difficult of the three to define. It is based on the authority of *Watson*

v M'Ewan [1905] AC 480 in which the House of Lords held that the privilege attaching to evidence which a witness give coram judice extended to the precognition or proof of that evidence taken by a solicitor. It is immaterial whether the proof is or is not taken in the course of proceedings. In *Beresford v White* (1914) 30 LTR 591 the privilege was held to attach to what was said in the course of an interview by a solicitor with a person who might or might not be in a position to be a witness on behalf of his client in contemplated proceedings.

By the nature of the above classification, I find that submission by counsel or parties is within the ambit of the first category. Submission is in actual fact an utterance or written statement, depending on its form, to the judge when summing up.

Thus going by the above principles these submissions of the defendant, however defamatory they are of the plaintiff, are protected by absolute privilege.

Realizing the possibility of the defendant succeeding in this defence, the plaintiff argued that there were actually no directions on either occasion, by the learned judge to tender written submissions. As such, these documents are irregular and made outside the judicial process where absolute privilege does not extend.

I am not convinced by this argument. If the learned judge had rejected these written submissions then there may be some merits. But on both occasions, when these were tendered, the court accepted them. When this happened, the statements contained in these documents must be considered to be made in the course of legal proceedings.

Mr Malik next drew my attention to the submission dated 1 November 1993 which is written in English. According to him, this contravenes s 8 of the National Language Act 1963/67 where it is decreed that Bahasa Malaysia must be used in court proceedings. Since this was not complied with and the learned judge having rejected this while ordering a copy in Bahasa Malaysia to be tendered, absolute privilege will not apply to this rejected submission in English.

I am not with this proposition. The National Language Act allows the judge a discretion to use the English Language in legal proceedings if he deems necessary in the interest of justice. According to the facts of this case, the learned judge had accepted this submission in English and only thereafter requested the defendant to submit another in Bahasa Malaysia. By this, it must be considered that the judge had accepted the English version at one moment in time. When this occurred the document became part of the legal process and is protected by absolute privilege.

The next point raised by Mr Malik is that these submissions containing the defamatory remarks were published to the staff of the defendant who assisted in its preparation either by way of typing and translating before they were tendered to the court. Since this was done not within the 'judicial' process, absolute privilege does not apply for these statements published.

On this contention, I need not add anything further except to adopt the ruling of *Osborn v Thomas Boulter* [1930] 2 KB 226 which accepted the expression of Cozen Hardy CJ as at pp 232–233:

> I think that, if we were to accede to the arguments for the plaintiff, we should in effect be destroying the defence of privilege in cases of this kind, in which limited companies and large mercantile firms are concerned; for it would be idle in such cases to suppose that such documents as those here complained of could, as a matter of business, be written by, and pass through the hands of, one partner or person only. In the ordinary course of business such a document must be copied and find its way into the copy letter-book or telegram book of the company or firm. The authorities appear to me to show that the privilege is not lost so long as the occasion is used in a reasonable manner and in the ordinary course of business.

Though, with this finding of absolute privilege, there is no necessity for this court to entertain the defendant's other attempts to extinguish herself from liability, but there is one item I wish to express my view. This relates to the defendant's assertion that since the offending parts of the submissions were expunged by the courts no defamatory statements exist. This argument is totally unacceptable and is a fallacy. Statements once made remain. When the court expunged them, it was only for the purpose of the court's process and record. Other than this, the statements remain as statements made.

Third defamation

On the third alleged defamation, which is an utterance in the courthouse when the court was not in session, I find it scandalous. Firstly, it is based on my finding that there is no truth in the allegation of incest by the plaintiff. Secondly, I believe that this remark was actually uttered by the defendant. The evidence of the plaintiff and Satha to what took place on that day are convincing as compared to those advanced by the defence. Thirdly, absolute privilege does not apply to any statement made not in the course of legal proceedings. At the material time when it was uttered, the learned judge was in his chambers conducting chamber proceedings. Though there may be occasions where the judge deals with chamber matters in open court (as claimed by the defendant) but such occasions are normally recorded in the judge's notebook. It is upon the defendant to prove this but no such evidence was tendered. Further *Gatley's on Libel and Slander* (9th Ed) at para 13.3 has cited two American cases — *Demopolis v Peoples National Bank* 796 p 2nd 426 (Wash 1990) and *Dashtgard v Blair* (1990) CCLT (2nd) 284 to support a proposition that a defamatory statement made by counsel outside the courtroom, with reference to the proceedings, is not entitled to absolute privilege. I am not only in full agreement with this proposition, but wish to add that it must also include the situation where the defamation is made in a courtroom when no proceeding is in session.

The defendant has in her submission asserted that this plaintiff's claim must fail for want of proof of actual damage caused by this slander. I believe the defendant has missed out ss 5 and 6 of the Defamation Act 1957 where it states that in a slander to the plaintiff of his profession there shall be no necessity for the plaintiff to prove that he has suffered damages. Here, the plaintiff is and was an advocate and solicitor, and the slander inflicted by the defendant on him was calculated to disparage him in his profession. Under these circumstances ss 5 and 6 of the Defamation Act applies to negate this defendant's contention.

Fourth defamation

This fourth defamation is based on a letter written by Jega to Satha. Though on the face of it this does not involve the defendant, there is the allegation of a conspiracy by the defendant, Jega, Saraswathy and Shanti to defame the plaintiff. I believe that this particular charge is brought under the cause of action for defamation due to the belief by the plaintiff that the tort of conspiracy merges with the tort of defamation. This could be influenced by a passage in the judgment of the judge of first instance in *MGG Pillai v Tan Sri Vincent Tan Chee Yioun* [1995] 2 MLJ 493 at pp 514–515, where he said:

> As I have stated earlier there appears to be relativeness, a linkage and a common sting between those two articles. The articles by the second and third defendants are on the same issues and the article written by the fourth and fifth defendants are also of the same issues though different from the articles written by the second and third defendants. It appears to me that there has been a concerted agreement between and among the defendants of a predominant intention to injure and damage the plaintiff's personal and commercial reputation and personal career by the publication of the four defamatory articles in question which in fact has caused irreparable injury, harm and damage to the plaintiff. This is the common link in all the four articles. However, applying the principle in the case of *Ward v Lewis* [1955] 1 All ER 55, the tort of conspiracy merges with the tort of defamation.

But after careful reading *Ward v Lewis* I do not find such a proposition. Conspiracy is a cause of action on its own in tort to cover a situation where there is a combination of two or more persons who wilfully injure a man in his trade resulting in damage to him — see p 340 of *Bullen & Leake and Jacob's on Precedent of Pleadings* (12th Ed). The essential ingredients of this tort of conspiracy are: (1) an agreement between two persons or more; (2) the agreement is for the purpose of injuring the plaintiff, and (3) that acts done in execution of this agreement resulted in damage to the plaintiff — see *Halsburys Laws of England* (4th Ed) at para 1527. This cause of action is separate and distinct from that of the tort of defamation which is governed by different factors. In conspiracy it is the agreement to injure the plaintiff in his trade and profession. For defamation it is the utterance and/or written statement which is untrue that causes injury of the plaintiff's reputation. Then there is the difference in the defences available. In defamation there are the substantive defences of absolute and qualified privileges, as well as fair comment and justification. Such defences however have no application to the tort of conspiracy. For example, under the present set of facts, if conspiracy is established, the defences of privilege (qualified or absolute), fair comment and justification do not apply; though it may be good for the cause of action of defamation — see the judgment of Parker LJ in *Gulf Oil Ltd v Page* [1987] 1 Ch 327 at pp 332–334.

By the pleadings of the plaintiff, I am of the view that this fourth allegation of defamation is more for the tort of conspiracy rather than defamation.

Fifth defamation

On the fifth alleged defamation I cannot agree to the defendant's explanation that this letter was to seek clarification. I cannot find any

request for clarification nor is there any subject matter that needs to be clarified. The contents consist of derogatory remarks which have no truth in them. They imply that the plaintiff is a person of low moral, lustful and mean, and for this has exposed him to hatred, contempt and ridicule by the right thinking members of society.

To convince this court that this letter could not have been published, the defendant declares that she did not fax this letter to the plaintiff's firm. She insists that the fax number disclosed on this document does not belong to her. Further she claims that she typed this letter herself and inserted it in an envelope marked 'Private and Confidential' before sending it off.

To me this seems highly improbable. Firstly, the top end of this letter bears a sign that this letter was received through the fax machine with a telephone number displayed. This number may not belong to the defendant but the fact that letter was from her firm and it came through the fascimile must imply that the defendant must have faxed it. Otherwise, who could have faxed such letter, particularly when the letter is from the defendant's firm addressed to the plaintiff's company and no one else. Secondly, if the defendant had sent this letter as claimed, she has not adduced evidence, such as a book normally kept by legal practitioners to record all correspondence sent out on each occasion, to show that this letter was actually posted. Thirdly, a scrutiny of the letter proper reveals no mark or sign of confidentiality. Unlike the usual normal commercial practice to also endorse on the letter proper the words 'Private and Confidential' besides stating this on the envelope.

The defendant next claims that she could not be responsible for the publication of this letter if the plaintiff's staff choose to read it. This is no excuse. A letter sent by fax to a legal firm and without any indication that it is solely for any particular person runs the risk of it being read by other members of the receiving firm. In this case it was read by such people, thereby considered published. Though this publication is to the plaintiff's staff but on the authority of *Brunswick v Harmer* (1849) 14 QB 185 the defendant is considered liable for defamation when such publication is to the plaintiff's servant and/or agent.

On the grounds stated above, I therefore find the defendant liable for this defamation.

Sixth defamation

Instead of an apology to the above letter when demanded by the plaintiff, the defendant directed Shanti to write on the acknowledgement copy of the plaintiff's letter of demand certain remarks. These remarks, I find, taken in the context of the series of events that transpired and read as a whole are defamatory.

Though the defendant has clarified that these were written by Shanti but the liability for publication arises from authorization. The defendant is and was the sole proprietor of the legal firm M/s Mahadevi Nadchatiram & Partners and Shanti was only a legal assistant — an employee of the defendant. By allowing a staff to write defamatory remarks on a document

meant and intended for the firm, and approving them amounts to the proprietor of the firm making such statements — see paras 236 and 244 of *Gatley on Libel and Slander* (8th Ed). For this, the defendant must be held responsible.

On the claim of justification, it is again concentrated on the allegation of incest and matters arising therefrom. Since I have ruled that the claim of incest is not sustainable and have given my reasons there is no necessity to repeat it here. On other indecent behaviour of the plaintiff towards his daughter, I find absolutely no evidence in support. This defence of justification here therefore has no merits.

For this sixth defamation I find the defendant liable.

Seventh defamation

The seventh allegation of defamation is the writing on the back of the last page of the serving copy of the writ for Suit 04. Firstly, I cannot accept the defendant's contention that there is no publication. The defendant's reliance, once again, on her assertion that the statement was written in her private office and thereafter placed it in a sealed envelope marked 'Private and Confidential' is just not probable. As an advocate and solicitor the defendant would be aware of the rules and procedures that require such an acknowledgement copy of a serving writ to be exhibited to an affidavit of service. With such a practice she would have known that there could be no confidentiality for this document. So it is most unlikely that she did what she claims. The account of PW5 is more probable and I accept it as the truth.

The defendant then contends that the words do not mean what the plaintiff implies. I am, however, of a different impression. The mere reading of this statement is sufficient for me to agree with the plaintiff's version of what it means.

On the defence of justification, I find that though there seems to be some truth of what had happened at the Holiday Inn Complex where the defendant's four car tyres were punctured and her car's windscreen smashed, it is my opinion that this was due to the frustration of the plaintiff in not being able to gain control of his daughter, not because of any infatuation for the defendant. And for the incident that happened in London, even if it is true, it took place too long ago to be of any relevance and effect.

On the defendant's claim of fair comment for these statements I am puzzled over the existence of the element of public interest. This matter certainly attracts no interest to the public; it is entirely a private family squabble.

For these reasons I find the defendant liable to the plaintiff for this libel.

Eighth defamation

This allegation of defamation is once again written on the back of a letter of demand for an apology. There are two sections: one written by Shanti, of which PW5 claims it was dictated by the defendant to Shanti. On this, the

defendant denies responsibility and insists that Shanti coined it on her own accord. I am more inclined to believe the testimony of PW5 who was able to give a detailed account of what took place when he proceeded to serve this document on the defendant. Even though the defendant may not have written this but she is not exempted from liability for: 'If one repeats, and another writes a libel, and a third approves what is written they are all makers of it; for all persons who concur, and show their assent or approbation to do an unlawful act, are guilty' per curiam in *R v Paine* (1696) 5 Mod Rep 163 at p 167 and applied in *Lawson v Burns* (1976) 6 WWR at p 369.

The next defence of the defendant is her insistence that this letter was not published since she had personally inserted it in a sealed envelope and addressed to the plaintiff marked 'Private and Confidential'. But this attempt is so often repeated that it ceased to be credible. Again based on the same reasons I have expressed earlier on this similar point I cannot accept this contention of the defendant. I am of the view that what PW5 said is true.

Next is the question of whether the words in both these sections are defamatory. My answer is in the affirmative. These words taken in the light of the circumstances mean and meant what the plaintiff claims in his statement of claim.

On the defence of fair comment, I need not elaborate except to say, once again, that the absence of public interest disqualifies the defendant from eligibility.

Thus I find the defendant is liable to the plaintiff for this defamation.

Ninth defamation

The ninth defamation concerns the statutory declaration made by Shanti. The defendant's approach is: firstly, she plays no part in the making of this; secondly, she benefits nothing by such act.

For this allegation I am of the view that the plaintiff has not satisfied this court that the defendant directed Shanti to affirm such contents. Shanti is and was then an adult and a member of the Bar. I do not think that for such a serious act as affirming a statutory declaration, Shanti could be forced into it. She must have done this, most probably in furtherance of the conspiracy brought about by inducement by the defendant and Jega. But to charge the defendant for making this defamatory statement, I am not convinced.

For the tort of defamation, I therefore find the defendant liable for the third, fifth, sixth, seventh and eighth defamation listed out above.

Conspiracy

I need not repeat the law on the cause of action of conspiracy since it is already set out in the earlier part of this judgment. But after considering the evidence as a whole and particularly from the contents of the defamation and how they were executed, I find the tort of conspiracy proved. The following are my reasons:

An examination of the various suits and affidavits filed by different parties and their associates on this subject matter of the Nadchatiram family dispute will immediately identify the existence of two opposing groups of family members pitched against each other. On the one side is: the plaintiff, Vijayalakshmi and Dr Mahadevan. The other group consists of: the defendant, Jega, Saraswathy and Shanti. The weapon used by the defendant and her associates is the assertion of incest by the plaintiff on Shanti. From the evidence adduced before me, I detected a pattern of concerted actions by this group to synchronise their attack on the plaintiff's reputation and his profession. This is with the sole objective of forcing the plaintiff to influence his wife to compromise on the settlement of the estate property. They have somewhat achieved their purpose for the allegation of incest was widely publicised. Dr Mahadevan, who I believe was at one time in the defendant's camp, has exposed the defendant to be the person who hatched this plot against the plaintiff. He testified that this took place at Jega's office when Jega first received information that Vijayalakshmi and others were filing suits against him for misfeasance and breach of trust in administering the Nadchatiram's estate. I have no reason to disbelieve this witness after having the opportunity to observe his demeanour and evaluate his evidence with all other testimonies.

Though the defendant has expressly denied any part in this scheme to injure the plaintiff in his profession I, however, think otherwise. I strongly feel that she was and is in the thick and thin of the whole conspiracy as can be noticed by her actions in the carrying out of these defamatory remarks in association and in conjunction with the others named.

The defendant has under this cause of action claimed various privileges similar to those used in defamation. Here I wish to reiterate that in conspiracy the tort is committed as soon as the agreement with other conspirators is made, and it continues to be committed so long as the combination persists — see *Halsburys Laws of England* (4th Ed, Reissued) at para 64 and the distinction expressed by Lord Parker in *Gulf Oil Ltd v Page*). As stated earlier these defences raised are only good for the cause of action for defamation and not for conspiracy.

With this, I conclude that the defendant is liable to the plaintiff under this cause of action of conspiracy.

Damages

Libel in tort is actionable per se, ie without proof of actual damages. Slander, on the other hand, requires proof of special damages except in certain categories, which are:

(1) where the words impute a crime for which the plaintiff can be made to suffer imprisonment.

(2) where the words impute the plaintiff suffers from contagious infectious disease.

(3) where the words are calculated to disparage the plaintiff in any office, profession, trade or business held or carried out at the time of the publication of the slander.

Since the slander in this case involves the plaintiff in his profession and imputes him to a crime punishable with a term of imprisonment, there is no necessity for the plaintiff to tender proof of special damages.

Besides the justification in awarding exemplary and aggravated damages, the authority of *MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun* has also accepted the long established principle of evaluating damages based on the following factors:

(1) The position and standing of the plaintiff.

(2) The extent of the publication.

(3) The mental distress, hurt, anxiety and mental anguish caused to the plaintiff as a result of the libel.

(4) The uncertainty undergone in this litigation.

(5) The conduct of the defendant from the time of the libel down to the very moment of the verdict.

(6) The absence and refusal of any correction, retraction or apology.

Undoubtedly the defamatory remarks by the defendant are of a grave and serious nature. It concerns the pride of a father of his family. A father's supreme duty is to act as a guardian and protector of his children. Here, the defendant's accusation of incest hit the very core of this value. In fact, such an act (incest) is so abhorred by society that severe term of imprisonment is often meted to offenders of this crime. Viewed in this context, the defendant's act in publishing such defamatory statements over a substantial period; and with malice, has certainly exposed the plaintiff to much hatred, contempt and ridicule by society. This has certainly done great damage to him, particularly in his professional career. The plaintiff was called to the Malayan Bar in 1965. He is still in active legal practice with his wife as a partner. This would give him almost 35 years standing in the profession, much of which depends on integrity and honesty as its hallmark for success and respect. By the nature of the defamation cast upon him, not only the plaintiff suffered. His family, other than the prodigal daughter, also bore the brunt of the effects. It must have brought great distress to them with profound consequences for the plaintiff. The mode of publication of the defamation, especially those on formal and legal documents are, to my mind, contemptuous. It shows the defendant's total disrespect for the image, integrity and honour of legal profession of which she, herself is a member. There were no apologies by her for these defamatory statements. Instead the requests for her repentance by the plaintiff were met by more defamatory remarks. These continued right on to the service of the writ in Suit 08. Because of the defendant's continuous unlawful acts in repeating and adding to the publication of the defamatory matters Suit 04 was commenced. Such is the extent of the defendant's vehemence against the plaintiff. After considering all those factors listed above for general damages, and those principles enunciated in *MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun's* case for exemplary and aggravating damages for defamation, I hereby award the following:

for Suit 08 damages to the plaintiff of a sum of RM2m for defamation; A

in Suit 04, damages to the plaintiff of a sum of RM1m for defamation.

For the tort of conspiracy in Suit 08, I am satisfied, once again, by the nature and manner of what was carried out by the defendant and her conspirators in damaging the plaintiff's profession, I award a sum of RM500,000. B

The other prayers for permanent injunctions to restrain the defendant from repeating the defamatory materials in both suits are also hereby granted.

For the counterclaim of the defendant in Suit 08, it is hereby struck off with cost. C

There will be cost to the plaintiff in both suits.

Order accordingly.

Reported by Jafisah Jaafar D

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